

LAW AND PUBLIC SAFETY

OFFICE OF THE ATTORNEY GENERAL

Insurance Fraud Detection Reward Program

Proposed New Rules: N.J.A.C. 13:88-3

Authorized by: Peter C. Harvey, Attorney General of New Jersey

Authority: N.J.S.A. 2C:21-4.7, Executive Reorganization Plan No.

7 (1998), Executive Order No. 9 (Hughes) and N.J.S.A. 52:14B-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposed Number: PRN 2004-59

Submit comments by April 17, 2004 to

Greta Gooden-Brown

Assistant Attorney General

Insurance Fraud Prosecutor

Department of Law and Public Safety

P.O. Box 094

Trenton, N.J. 08625-0094

The agency proposal follows:

Summary

These rules are proposed in response to the enactment of N.J.S.A. 2C:21-4.7 which authorizes the Office of the Insurance Fraud Prosecutor (OIFP) to provide for a reward program for the reporting of suspected health care claims fraud, insurance fraud or any other criminal offense involving or

related to an insurance transaction. A reward of up to \$25,000 will be paid to persons providing information leading to the arrest, prosecution and conviction of persons who have committed health care claims fraud, insurance fraud or any other criminal offense related to an insurance transaction. The OIFP, which is established in the Division of Criminal Justice in the Department of Law and Public Safety, is under the supervision of the Attorney General.

Nothing in these proposed rules affects or alters the statutory obligation found at N.J.S.A. 17:33A-9 to report violations of the New Jersey Insurance Fraud Prevention Act to the OIFP.

Proposed N.J.A.C. 13:88-3.1 sets forth the scope and purpose of the new chapter which is the implementation of those rules necessary to establish the Insurance Fraud Detection Reward program.

Proposed N.J.A.C. 13:88-3.2 contains the definitions which are necessary for the implementation of the new subchapter.

Proposed N.J.A.C.13:88-3.3 provides for the liberal construction of these rules to permit the OIFP to discharge its statutory mandate.

Proposed N.J.A.C.13:88-3.4 provides the various procedures individuals may use to report to the OIFP suspected cases of health care claims fraud, insurance fraud or any other

criminal offense relating to an insurance transaction such as the toll free hotline telephone number, the OIFP website and electronic mail.

Proposed N.J.A.C. 13:88-3.5 provides for a reward application form and puts applicants on notice that they may be required to give verbal statements under oath or sign written memorializations of their verbal statements.

Proposed N.J.A.C. 13:88-3.6 provides that the reward application form must be submitted within 30 days of the individual's initial report to the OIFP of suspected health care claims fraud, insurance fraud or any other criminal offense relating to an insurance transaction.

Proposed N.J.A.C. 13:88-3.7 provides that an informant may request anonymity, but that in certain circumstances, by statute, court rule or judicial decision, the informant's identity may have to be disclosed. The proposed rule also provides that all information and materials received by or maintained by the OIFP pursuant to these rules are confidential and not subject to public access pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

Proposed N.J.A.C. 13:88-3.8 provides the criteria for evaluating reward program applications. The information provided must directly lead to the arrest, prosecution and conviction of a specific individual(s) or entity(ies) for health care claims

fraud, insurance fraud or any other criminal offense involving or related to an insurance transaction.

Proposed N.J.A.C. 13:88-3.9 provides that within 90 days of the conviction of the individual or entity identified by the applicant, the OIFP must notify the applicant in writing of their eligibility for the reward.

Proposed N.J.A.C. 13:88-3.10 lists those persons excluded from eligibility for a reward, including individuals, and their immediate family members, employed by the OIFP and insurance companies.

Proposed N.J.A.C. 13:88-3.11 provides the process for claiming the reward amount and provides that if more than one individual or entity is entitled to a reward in a particular case, the total reward amount is to be apportioned among the eligible claimants and will not exceed either five percent of the value of the fraud or \$25,000 whichever is less.

Proposed N.J.A.C. 13:88-3.12 provides the guidelines for determining who is eligible to receive a reward when there is more than one applicant in a single case.

Proposed N.J.A.C. 13:88-3.13 provides that if criminal charges are subsequently dismissed against a defendant the applicant will not be eligible for the reward, unless the result would be manifestly unjust.

Proposed N.J.A.C. 13:88-3.14 provides that the only appeal from the Insurance Fraud Prosecutor's reward determination is to the Attorney General, not through the Superior Court.

Proposed N.J.A.C. 13:88-3.15 provides for the severability of any provision of these rules adjudged to be invalid.

The Appendix contains the reward application form.

Because the OIFP is providing a 60 day comment period, the proposal is exempt from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rules articulate the statutory reporting requirements established in N.J.S.A 2C:21-4.4 through - 4.6 for the payment of rewards for providing information which results in the arrest, prosecution and conviction of an individual or entity for health care claims fraud, insurance fraud, or any other criminal offense related to an insurance transaction. The proposed new rules will assist the OIFP in fighting insurance fraud in the State of New Jersey. The reward program will be an incentive for individuals and entities to report instances of insurance fraud that they would not have otherwise reported to the OIFP.

Economic Impact

The adoption of these proposed new rules should not have a significant economic impact on any insurance companies. The rewards will be paid from surcharges imposed pursuant to N.J.S.A. 17:33A-5.1 and supplemented as necessary by amounts budgeted for the operation of the OIFP.

Federal Standards Statement

A Federal standards analysis is not required as the proposed new rules regulate the insurance fraud prevention and detection activities in this State. These rules relate to an insurance fraud reporting program which is the subject of State law and are not subject to any Federal requirements or standards.

Jobs Impact

The OIFP does not anticipate that any jobs will be gained or lost as a result of these proposed new rules. The OIFP invites commenters to submit any data or studies concerning the jobs impact resulting from the proposed new rule.

Agriculture Industry Impact

The OIFP does not anticipate any impact on the agriculture industry from the proposed new rules.

Regulatory Flexibility Statement

The proposed new rules will apply to individuals who report suspected insurance fraud to the OIFP none of which are small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Smart Growth Impact

The proposed new rules will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposed new rules follows:

CHAPTER 88

OFFICE OF INSURANCE FRAUD PROSECUTOR

SUBCHAPTER 3. INSURANCE FRAUD DETECTION REWARD PROGRAM

13:88-3.1 Scope

This subchapter applies to all persons in the State of New Jersey.

13:88-3.2 Definitions

For the purposes of this subchapter, the following terms have the following meanings, unless the context clearly indicates otherwise:

"CLASS" means the Case Screening, Litigation, and Analytical Support Section of the Office of the Insurance Fraud Prosecutor.

"Conviction" means the entry of a judgment of conviction at the time sentence is imposed by the court.

"Value of the fraud" means the direct or indirect gain or advantage realized by the person or entities convicted of the crime of insurance fraud, or the direct or indirect gain or advantage that would have been realized by the person or entities convicted of the crime of insurance fraud if the fraud had not

been detected. The term does not include amounts imposed or collected as interest, penalties and/or fines.

13:88-3.3 Construction

(a) These rules shall be liberally construed to permit the OIFP to discharge its statutory function.

(b) Upon appropriate notice, these rules may be relaxed for good cause in a particular situation in order to effectuate the purposes of N.J.S.A. 2C:21-4.7. Statutory time limits shall not be relaxed.

13:88-3.4 Fraud reporting procedure

(a) Individuals may report suspected cases of health care claims fraud, insurance fraud or any other criminal offense related to an insurance transaction by one of the following methods:

1. Call the OIFP toll free hotline at 1-877-55-FRAUD (1-877-553-7283) during regular business hours (Monday through Friday 9:00 A.M. to 5:00 P.M.) and speak to a hotline operator;

2. Call the OIFP toll free hotline number at 1-877-55-FRAUD (1-877-553-7283) after regular business hours and leave a detailed message, including a name and phone number at which the caller can be reached;

3. Log onto the OIFP website (www.njinsurancefraud.org) and submit an online report;

4. Send an electronic mail message to the OIFP at njinsurancefraud@njdcj.org; or

5. Write directly to the OIFP at the following address:
New Jersey Department of Law and Public Safety, Division of
Criminal Justice, Office of the Insurance Fraud Prosecutor, P.O.
Box 094, Trenton, N.J. 08625-0094, Attention: CLASS.

13:88-3.5 Reward application procedure

(a) A reward for information submitted to the OIFP under N.J.A.C. 13:88-3.4 requires the completion of a reward application form prescribed by the OIFP, included in the subchapter Appendix and incorporated herein by reference, in addition to the provision of information to the OIFP under N.J.A.C. 13:88-3.4. The reward application form must be completed in its entirety, signed and notarized. The reward application form must be mailed to the OIFP at the address listed in N.J.A.C. 13:88-3.4(a)5.

(b) The person submitting the application may, at the discretion of the OIFP, be interviewed by the OIFP with regard to the information the applicant is submitting for consideration. An applicant may also be required to give his or her verbal statement under oath and sign a written memorialization of his or her statement.

(c) The application form may be obtained by requesting one in writing from the OIFP, calling the OIFP toll free hotline and

requesting one, or logging onto the OIFP website and downloading the form.

(d) The OIFP shall acknowledge to the applicant, in writing, receipt of his or her application.

13:88-3.6 Timely filing of applications for reward

In all cases where relevant information is provided by a person without the simultaneous filing of a reward application pursuant to this subchapter, that person may subsequently file an application for reward consideration no later than 30 days from the date on which the person initially provided information to the OIFP pursuant to N.J.A.C. 13:88-3.4.

13:88-3.7 Confidentiality

(a) Upon request of the applicant at the time the application is made, the OIFP and any other governmental agency involved in the criminal proceeding shall not disclose the identity of the applicant. This is subject, however, to any statute, rule of Court or judicial decision which may require divulgence of such identity to certain parties including, in certain circumstances, a criminal defendant.

(b) All information and materials received by or maintained by the OIFP pursuant to these rules are confidential and shall not be subject to public access pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

13:88-3.8 Criteria for evaluating a reward application

(a) The OIFP may pay a reward upon the arrest, prosecution, and conviction of a person or entity for health care claims fraud, insurance fraud or any other criminal offense involving or related to an insurance transaction.

(b) A person who provides information under N.J.A.C. 13:88-3.4 and submits a timely reward application form under N.J.A.C. 13:88-3.5 shall be eligible for a reward if the information:

1. Led to the arrest, prosecution and conviction of a specific individual(s) or entity(ies) for specified conduct occurring during a particular time period, as detailed in the reward program application submitted by the informant pursuant to N.J.A.C. 13:88-3.5; or

2. Directly led to the arrest, prosecution and conviction of other individuals or other entities for specified conduct occurring during a particular time period as detailed in the reward program application submitted by the informant pursuant to N.J.A.C. 13:88-3.5.

(c) The OIFP shall not grant a reward for information relating to an individual or entity that, at the time the information is provided, is already the subject of a referral to the OIFP; is already the subject of an investigation by the OIFP, either civilly or criminally; or is already the subject of an investigation by the New Jersey Department of Human Services; the New Jersey Department of Health and Senior Services; the Health

Care Financing Agency and the Office of the Inspector General; the New Jersey Department of Banking and Insurance; the New Jersey Department of Consumer Affairs and its licensing boards; or any other Federal, State, county or municipal agency.

13:88-3.9 Determination and notification of eligibility for reward

(a) Upon the conviction of persons or entities who have committed health care claims fraud, insurance fraud or any other criminal offense related to an insurance transaction, the OIFP shall notify the applicant within 90 days of the conviction as to the OIFP's determination of the eligibility of the applicant for the reward.

(b) Written notification shall contain the specific reasons for a determination and inform the applicant that:

1. There is insufficient causal relationship between the information provided and the arrest, prosecution and conviction of the individuals or entities named in the matter and the applicant is not eligible for a reward;

2. The information provided proximately resulted in the arrest, prosecution and conviction of the individuals or entities named in the matter and the applicant is eligible for a reward;
or

3. There is a need for further examination of the application necessitating a written response and/or personal

appearance of the applicant for further information before a determination as to eligibility can be made.

13:88-3.10 Persons not eligible for a reward

(a) The following persons are not eligible to receive a reward under this subchapter:

1. An individual who was or is an immediate family member of an officer or employee of any of the agencies or entities listed in N.J.A.C. 13:88-3.8(c), or any individual working on behalf of any of the agencies or entities listed in N.J.A.C. 13:88-3.8(c) or who is an immediate family member of an individual working on behalf of any of the agencies or entities listed in N.J.A.C. 13:88-3.8(c), at the time he or she came into possession of, or divulged, information leading to an arrest, prosecution and conviction;

2. Any other Federal, State, county or municipal employee, contractor or grantee shall not be eligible for a reward under this subchapter if the information submitted came to their knowledge in the course of their official duties;

3. Any individual who was or is an employee of an insurance company, as defined in N.J.S.A. 2C:21-4.5 ,or an individual working on behalf of an insurance company as defined in N.J.S.A. 2C:21-4.5, or the immediate family member of an employee of an insurance company as defined in N.J.S.A. 2C:21-4.5 or of an individual working on behalf of an insurance company as

defined in N.J.S.A. 2C:21-4.5, at the time he or she came into possession of, or divulged, information leading to an arrest, prosecution and conviction;

4. An individual or entity that participated in or facilitated the offense with respect to which payment of the reward would be made;

5. An individual or entity who is eligible for an award under any other state, Federal or other reward program because the individual previously reported to another state, Federal or other entity substantially the same information on suspected health care claims fraud, insurance fraud or any other criminal offense involving or related to an insurance transaction, as they subsequently reported to the OIFP under these rules; and

6. An individual who knowingly provides false information to the OIFP.

13:88-3.11 Post-determination claiming and payment of rewards

(a) Within 20 days of receipt of a notification of reward eligibility pursuant to N.J.A.C. 13:88-3.8, the applicant shall make a formal claim for such reward by forwarding to the OIFP a written acknowledgment of the notification, a request for the reward, and the name and address to which the reward should be delivered.

(b) No reward shall exceed either five percent of the value of the fraud or \$25,000, whichever is less; if more than one

individual or entity is eligible to receive a reward in a particular case, the Insurance Fraud Prosecutor shall allocate the total reward amount (of up to five percent of the value of the fraud and not exceeding \$25,000, whichever is less), among the eligible claimants.

(c) The OIFP shall make reward payments as promptly as possible, but in no event shall payment be made before all direct appeals of the conviction have been exhausted.

(d) No OIFP employee shall make an offer or promise or otherwise bind the OIFP with respect to payment of any reward under this subchapter or the amount of the reward.

(e) If, after a reward is accepted, the OIFP finds that the recipient was ineligible to receive the reward, the OIFP shall not be liable for the reward and the recipient shall refund all monies received to the OIFP.

(f) Reward amounts shall be reported to the appropriate state and Federal taxing authorities as required by law. Applicants shall provide all information necessary to making such reports.

13:88-3.12 Multiple applications

(a) Except when a contrary result is required to prevent manifest injustice, in cases where two or more applicants submit substantially identical information which proximately results in the arrest, prosecution and conviction of persons or entities who

have committed health care claims fraud, insurance fraud or any other criminal offense related to an insurance transaction, only the person who has filed his or her application first in time shall be considered for the receipt of a reward pursuant to this subchapter.

(b) In cases where two or more applicants submit different information which proximately results in the arrest, prosecution and conviction of persons or entities who have committed health care claims fraud, insurance fraud or any other criminal offense related to an insurance transaction, thereby rendering both applicants eligible for a reward pursuant to this subchapter, the Insurance Fraud Prosecutor may apportion the amount of the reward among the applicants based upon consideration of relevant factors including, but not limited to:

1. The timing (chronological order) of each application filed;
2. The relative overall accuracy of information in each application filed; and
3. The relative extent of cooperation with the prosecution by each applicant in the particular case for which the information has been provided.

(c) Upon such apportionment set forth in (b) above, the Insurance Fraud Prosecutor shall provide each eligible applicant with a written statement of the reasons for the determination.

13:88-3.13 Dismissal of charges

Except when a contrary result is required to prevent manifest injustice, if a person supplies information which proximately results in the arrest of and institution of criminal charges against persons or entities for health care claims fraud, insurance fraud or any other criminal offense relating to an insurance transaction and in the discretion of the OIFP those charges are subsequently dismissed, no person shall be eligible pursuant to this subchapter for a reward from those proceedings.

13:88-3.14 Appeals

The decision of the Insurance Fraud Prosecutor regarding reward eligibility and reward payment pursuant to this subchapter shall be final unless the reward recipients disagree, in which event, the matter shall be referred to the Attorney General whose decision shall be final and shall not be subject to judicial review.

13:88-3.15 Severability

If any rule, sentence, paragraph or section of these rules, or the application thereof to any persons or circumstances, shall be adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any rule shall lose its force and effect, such judgment or action shall not affect, impair or void the remainder of these rules.

APPENDIX

STATE OF NEW JERSEY

OFFICE OF THE INSURANCE FRAUD PROSECUTOR

INSURANCE FRAUD REPORTING REWARD APPLICATION

APPLICANT INFORMATION

Name: _____

Address: _____

Number and Street

Apt. No.

City

State

Zip Code

Phone: (H)_____ (W)_____

email _____

Do you wish to keep your identity confidential? Yes _____ No _____

Nondisclosure of your identity is subject to any statute, Rule of Court or judicial decision which may require divulgence of such identity to certain parties including, in certain circumstances, criminal defendants.

INFORMATION PROVIDED

(You may attach additional sheets if needed)

Date(s) of Incident: _____

Location: _____

Detailed Description of Incident: _____

I hereby certify that the information provided above is true and accurate. I am aware that if any of the foregoing information is willfully false I am subject to punishment.

Date

Signature of Applicant (sign only in the presence of a Notary Public)

Notary Public

Date

Notary Seal: